only in a surface position in full daylight and when flying the national colors. Whether or not Norway can enforce this decree is problematical, not because of the questions of law involved, but because the belligerent most affected may be able to use force against Norway, a relatively weak Power.

So far the exploit of the U-53 is a unique incident. It is to be hoped that it will remain so. Its repetition might go far toward compromising the neutrality of the United States. As a single incident, it forcibly emphasizes the wisdom of the resolution adopted by the Institute of International Law at the same session Article IV:

> In case of war the neutral littoral state has the right by the declaration of neutrality or by *special notification* to fix its neutral zone beyond six miles to the range of a cannon-shot from its shores.

Absolutely to interdict under-surface navigation in territorial waters by all foreign submarines in war or peace, and to insist upon "innocent passage" that is really innocent in coastal waters as far from the coast as the range of the most modern ordnance, would go far toward preventing the waters adjacent to the neutral being made a base of belligerent maritime operations. It would render difficult submarine operations begun by submerging in coastal waters and consummated in the open sea *dum fervet opus*.

J. S. Reeves

## SAFE CONDUCT FOR ENEMY DIPLOMATIC AGENTS

On September 8, 1915, the Secretary of State requested the recall of the Austrian Ambassador because of his proposed plans to instigate strikes in American manufacturing plants engaged in the production of munitions of war. The request was complied with, and on October 5, 1915, Dr. Dumba left the United States, the Department of State securing for him a safe-conduct. Count Adam Tarnowski von Tarnow, after an interval of some thirteen months, has been appointed Austrian Ambassador to the United States, and just as his predecessor wished a safe-conduct to return to his native land, he was apparently anxious to receive a safe-conduct for himself and his suite from the shores of Europe to Washington. About the middle of November the United States informed Great Britain and France that Count Tarnowski had been appointed Ambassador to the United States and the question of a safe-conduct for the Austrian

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Ambassador and his suite was broached. Shortly before the end of November Great Britain and France are understood — for the correspondence has not been published — to have expressed an unwillingness to furnish the Ambassador and his suite with a safe-conduct, and, leaving aside the question whether international law permits a belligerent to take an ambassador of the enemy destined to a neutral country from the vessel upon which he is proceeding on the high seas to his post, the Allies are reported to have contended that the activity of diplomatic agents of the enemy in the United States was such that they did not care to facilitate their arrival in the United States; that by the purchase of supplies and of contraband in the neutral country they injured the Allies, and by their activity in general in the United States they rendered services to the enemy country which it was the right and the duty of the Allies to prevent if they could; and that they could not be expected to aid the Ambassador and his suite to reach the United States, even if they did not remove him from the vessel on which he was traveling.

The United States, it is understood, protested against this attitude of the Allied Governments on the ground that it has a right to maintain diplomatic relations with any and every country according to its pleasure; that the Allied Powers should recognize this right and should not throw obstacles in the way of its realization; and that the United States expected the Allied Governments to reconsider their action and to assure it that Count Tarnowski and his suite would not be molested during his passage from Europe to the United States to take up the duties of his post.

On December 15th, as the JOURNAL goes to press, a statement appears in the newspapers that the Allied Governments have reversed their original attitude, apparently out of courtesy and as a mark of their respect for the United States.

The question is apparently simple in principle, although it appears to be somewhat embarrassing in practice. Count Tarnowski was not asking permission to pass through belligerent countries to his neutral post. This would have raised the question squarely whether the belligerent was bound out of courtesy and respect to the neutral to allow the diplomatic agent of the enemy to pass through its territory. Count Tarnowski was endeavoring to reach his post by way of the high seas, which cannot be regarded, today at least, as the patrimony of any one country. Upon a neutral vessel he should be immune

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from seizure and capture, although the reasons advanced by the Allies for refusing to grant a safe-conduct are not without weight. If the diplomatic agent of the enemy is protected upon a neutral vessel from seizure, it is not to be presumed that the Allied Governments would seek to remove him from the vessel, even although they might be unwilling to grant him a safe-conduct. The mere failure to do so does not mean that the Allies questioned his immunity, but rather that they were unwilling to further his voyage by any act on their part.

Nations are long-lived and they should have long memories. The Allied Powers should recollect their attitude when Messrs. Mason and Slidell, civil, not military, commissioners of the Confederates States of America, were removed from the British packet *Trent*, on its voyage to England in 1861, by Captain Charles Wilkes in command of the American man-of-war, the *San Jacinto*. Great Britain protested against this action on the part of the American authorities as contrary to international law, and the French Government, considering it a violation of the rights of neutrals and threatening neutral rights in general, also protested against the action of the United States. Russia, it is understood, protested informally but none the less energetically.

If it was wrong for a belligerent in 1861 to remove enemy agents from a neutral vessel, on their way to a neutral country, it would be wrong in 1916 so to do, unless international law has changed in this respect, and the law has not, it is believed, been changed either by practice or by convention. It was apparently in the interest of the United States to prevent Messrs. Mason and Slidell from reaching Europe in order to act in behalf of the Confederate States, and therefore Captain Wilkes removed them from the *Trent*. It is apparently in the interest of the Allied Powers not to facilitate the journey of Count Tarnowski and his suite to the United States, and therefore they refused a safe-conduct. The United States, because of the British protest and the protests of neutral Powers, released Messrs. Mason and Slidell. The Allied Governments, as a courtesy and out of respect for the United States, have either granted a safe-conduct to the Austrian Ambassador and his suite or have assured the United States that they will not be molested. The fact is the United States was wrong in 1861 and the Allied Powers were short-sighted in 1916.

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